Supreme Court, U. S.
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No. 75-21

IN THE SUPREME COURT OF THE UNITED STATES

_____ Term, 1975

PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,

vs.

EDWARD BEAVERS,
Respondent.

PETITIONER'S REPLY BRIEF

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ARGUMENT

I

THE GRANTING OF CERTIORARI IN THIS CAUSE IS THE ONLY EFFECTIVE MANNER IN WHICH TO GIVE PROPER CONSIDERATION TO THE VITAL FEDERAL QUESTIONS RAISED HEREIN.

Recognizing that brevity can result in a failure to communicate, your petitioner wishes to elucidate, by way of this supplemental reply, certain aspects of its petition it thinks obvious, but which seem to confuse respondent.

Issue I, without colorable doubt, raises a substantial Federal question. Reduced to simplicity it asks this Court to reexamine those cases which have refused, upon whatever grounds, to reconcile the clear mandate of Article 6 of the United States Constitution[1] with the Court's past espoused position that it will allow State courts, in interpreting identical concepts in their own Constitutions, to do so more liberally than this Court has held the United States Constitution to require. It is submitted that some concepts are so fundamental as to permit of but one arbiter, but one definition. "A reasonable expectation of privacy" as the area

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[1] reading in pertinent part:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

protected by the Fourth Amendment is one such concept,[2] and was specifically recognized as such by the Michigan Supreme Court in *People* v *Beavers*, 393 Mich 554, 562; ..... NW2d ..... (1975). Because, as here, law enforcement, and the general public have more access to, are more aware of, and can more easily ascertain and follow the dictates of this Court than any other, there exists at this time a vital, national need for a final and conclusive acceptance of this role.[3]

Issue II does no more than ask this Court to give the decision in *Beavers* the same careful analysis it gave the state court decision in *Oregon* v *Hass*, ... US .....; 95 S Ct 1215; 43 L Ed 2d 570 (1975). It recognizes that a careful scrutiny of the State Court opinions in *Hass* casts doubt upon the "purity" of the Federal question involved there. It further seeks from this Court an examination of the *Beavers* opinion in light of the "true nature" of the adequate state ground doctrine.

Close perusal of the very articles relied upon by Respondent,[4] and a third, "The Untenable Non-Federal Ground in the Supreme Court", NOTE, 74 Harr L Rev 1375 (1961), and reconciliation of the case treatment of the "Federal question — State grounds" dichotomy leads one to the inescapable conclusion these rubrics have been more a device for effective docket control than immutable principles of law. The state ground must be sufficiently broad

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[2] As are "speech" and "jury trial" [see e.g. *Duncan* v *Louisiana*, 391 US 145; 88 S Ct 1444; 20 L Ed 2d 491 (1968)], while neither "unanimity", nor "twelve" have been held to be such fundamental aspects of the right to a jury trial.

[3] As evidenced by the confusion engendered by Congress' obvious intent in 18 USC 2510, *et. seq.*

[4] Hall, A., "The Inadequate State Ground", 65 Col L Rev 943 (1965), Sandalow, T., "Henry v Mississippi and the Adequate State Ground: Proposals for a Revised Doctrine", 1965 Sup Ct Rev 187.

and clearly independent. Reasoning controlled by Federal law does not meet such a test. *State Tax Commission* v *VanCott*, 306 US 514; ..... S Ct .....; 83 L Ed 950, 952 (1939), *Minnesota* v *National Tea Co*, 309 US 551, 556; 8 S Ct 211; 84 L Ed 920, 923 (1940). The alleged state ground must be tenable, not used to give color to a refusal to allow a Federal claim, *Chapman* v *Goodnow's Adm'r*, 123 US 545, 546-547; 31 LE 235 (1887), or a mere device to prevent review, *Enterprise Irrigation Dist* v *Farmer's Mut Canal Cr*, 243 US 157, 164; 37 S Ct 318; 61 L Ed 649 (1917). Of course, if this Court decides Issue I in Petitioner's favor there *can be no* arguable state ground for the *Beavers* decision. Moreover, the Michigan Supreme Court has recently evinced a propensity for such evasion. Compare the decision on remand to the Court in *People* v *Bloss*, 394 Mich 79, 81; ..... NW2d ..... (1975), with this Court's specific opinion to the contrary in *Miller* v *California*, 413 US 15, 27-28; 93 S Ct 2607; 37 L Ed 2d 419, 432-433 (1973). See also, *People* v *McMiller*, 389 Mich 425, 429-431; 280 NW2d 451 (1973), *People* v *White*, 390 Mich 245, 252-258; 212 NW2d 222 (1973), and *People* v *Jackson*, 391 Mich 323, 337-339; 217 NW2d 22 (1974).

Issue III raises the most intriguing and perplexing question of all. It submits that the people of the State of Michigan in their Constitution of 1963 attempted to limit the exclusionary rule as it pertains to search and seizures as strictly as they could. The Michigan Supreme Court has itself found the proviso of Art. 1, § 11, to have had such an intent. *People* v *Moore*, 391 Mich 426, 435 (1974). Your Petitioner seeks to raise the issue of a denial of Due Process of Law on behalf of that class of law-abiding citizens, the People of the State of Michigan, who are being injured by rulings ignoring their specific will. This involves no more than a recognition of the rights vested in and guaranteed to the community (US Const, Art 4, Sec 4; Amend XIV, Sec 1) and a balancing of those rights against the great protections of the individual granted by the Bill of Rights. Striking that balance between the interests of the individual and the community has always been the proper role of this tribunal, the Court must atune to the spirit and harmonies of that document.

CONCLUSION

WHEREFORE, your Petitioner, respectfully submits that it is only after a formal presentation of the issues sought to be raised herein that a proper decision as to their merit may be had.

Respectfully submitted,

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Dated: August 27, 1975.